

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMINEZ RICHARDSON and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, CA

*Docket No. 01-974; Submitted on the Record;
Issued February 19, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that he was disabled from March 11 to April 30, 2000 due to his March 6, 2000 work injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing as untimely.

On March 6, 2000 appellant, then a 44-year-old forklift operator, filed a notice of traumatic injury claiming that on that same day he injured his left ankle and left knee when his leg was trapped between a forklift and a large container. On March 6, 2000 Dr. Kathleen Roth, a Board-certified family practitioner, diagnosed appellant with "fracture left ankle" and "hermatoma left lower leg." She indicated that appellant may return to modified work on March 10, 2000 and regular work on March 21, 2000. Her restrictions were no lifting from the floor and no squatting or bending. She stated that appellant's light-duty restrictions included; sitting, reaching and grasping, only lifting up to 10 pounds and wearing crutches and a cast.

In a treatment note dated March 22, 2000, Dr. Robert K. Peterson, a Board-certified orthopedic surgeon, stated that appellant could return to light duty in three weeks and to full duty on approximately May 12, 2000. He also stated that appellant should do "minimal weight bearing" and should not drive with a clutch. In a report also dated March 22, 2000, he restated that appellant's work status should be with minimal weightbearing only, no driving with a clutch and no use of the lower extremity for any pressure activities. In a treatment note dated April 12, 2000, Dr. Peterson changed appellant's return to light-duty work date to April 26, 2000.

In a follow-up report from Dr. Peterson dated April 26, 2000, he stated that appellant's light-duty restrictions included no lifting, pushing, or pulling over 30 pounds, no squatting, bending, climbing or kneeling and no prolonged standing or walking over 30 minutes per hour.

In a treatment note dated May 24, 2000, Dr. Peterson indicated that appellant may return to light duty on May 24, 2000 and full duty on June 19, 2000. Light duty was to include limited squatting, bending and climbing and no prolonged standing or walking over 45 minutes per hour.

Appellant's employing establishment controverted his claim for disability stating that he was paid COP for his absence from March 7 to 9, 2000, but that he stopped coming to work on March 9, 2000 without any medical documentation to support his absence.¹ The employing establishment claimed that light-duty work was available, although there is no evidence of this in the record. Appellant returned to work on May 1, 2000.

Appellant submitted a personal statement indicating that he was unable to work during March 6 to May 1, 2000 because he was unable to drive a car due to his cast and use of crutches. He stated that at no time did his employer arrange for transportation to and from work.

Appellant filed a claim for compensation (Form CA-7) for March 11 to April 30, 2000.

By decision dated August 29, 2000, the Office denied appellant's claim for compensation from March 11 to April 30, 2000 since the medical evidence of record failed to establish that appellant was disabled from work due to the March 6, 2000 injury.

By letter postmarked September 30, 2000 and received on October 3, 2000, appellant requested an oral hearing.

By decision dated November 16, 2000, the Branch of Hearings and Review denied appellant's request for an oral hearing as untimely.

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In this case, there is medical evidence of record that appellant was released for light duty during this time period; however, there is no evidence of record that a light-duty position was offered to appellant. On remand the Office shall further develop the record to determine appellant's work restrictions and the availability of light work during the claimed period of disability. The Board notes that Dr. Roth indicated that appellant may return to light-duty work on March 10, 2000 and Dr. Peterson stated that appellant may return to light-duty work on April 12, 2000. After such development as necessary, the Office shall issue a *de novo* decision.⁶

The Board also finds that the Office properly denied appellant's request for an oral hearing as untimely.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu, thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.⁷ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁸ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁹

Appellant's request for an oral hearing was postmarked September 30, 2000 and received by the Office on October 3, 2000, which is more than 30 days after the Office's August 29, 2000 decision. As such, appellant is not entitled to an oral hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether he established that he sustained an injury in the performance of duty causally related to factors of his federal employment could equally well be addressed by requesting reconsideration.¹⁰ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.

⁵ *Id.*

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ 20 C.F.R. § 10.616(a) (1999).

⁸ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁹ *Rudolph Bermann*, 26 ECAB 354 (1975).

¹⁰ The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).

Accordingly, the August 29, 2000 decision of the Office of Workers' Compensation Programs regarding appellant's period of disability is remanded and the November 16, 2000 decision is affirmed.

Dated, Washington, DC
February 19, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member